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In re Application of BORSI et al :
U.S. Application No.: 10/507,178 :
PCT Application No.: PCT/IB2003/001458 :
Int. Filing Date: 11 March 2003 : DECISION
Priority Date Claimed: 11 March 2002 :
Attorney Docket No.: ELLIS-0001 :
For: ANTIBODIES DERIVED FROM ANTI ED-B :
L19 AND TARGETING TUMOR VASCULATURE :

This is in response to applicant's renewed petition under 37 CFR 1.137(b) filed 21 September 2007.

BACKGROUND

On 11 March 2003, applicant filed international application PCT/IB2003/001458, which claimed priority of an earlier United States application filed 11 March 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 18 September 2003. The thirty-month period for paying the basic national fee in the United States expired on 11 September 2004.

On 10 September 2004, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 29 March 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that, *inter alia*, a sequence listing must be filed.

On 31 May 2005, applicant filed a sequence listing.

On 12 February 2007, the DO/EO/US mailed a Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures (Form PCT/DO/EO/922), which indicated that a new sequence listing must be filed.

On 13 March 2007, international application PCT/IB2003/001458 became abandoned as to the United States for failure to timely respond to the Notification to Comply.

On 21 September 2007, applicant filed a petition under 37 CFR 1.137(b).

On 28 July 2009, this Office mailed a decision dismissing the 21 September 2007 petition.

On 11 September 2009, applicant filed the present renewed petition under 37 CFR 1.137(b).

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

Applicant has previously satisfied items (2)-(4) above.

With regard to item (1), applicant has not provided the required reply. Specifically, a proper sequence listing in computer readable form has not been supplied as set forth in the decision mailed 28 July 2009. The petition states that the sequence listing filed 21 September 2007 does not contain any headers. However, the submitted sequence listing in computer readable form clearly shows headers.¹ The petition further states that applicant never received the sequence listing error report dated 16 October 2007. However, the application was already abandoned at the time the error report was generated. Furthermore, the error report was generated in response to the sequence listing in computer readable form that was submitted with the initial petition to revive under 37 CFR 1.137(b). Thus, the fact that applicant purportedly never received the error report is irrelevant to the abandonment of the application.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

¹ See the attached printout of the sequence listing in computer readable form.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)". No additional petition fee is required.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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PCT Legal Office

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ATTACHMENT: printout of the sequence listing in computer readable form

<110> APPLICANT: Borsi, Laura
Carnemolla, Barbara
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Castellani, Patrizia
Zardi, Luciano
Friebe, Matthias
Hilger, Christoph-Stephan
<120> TITLE OF INVENTION: Antibodies Derived from Anti ED-B L19
and Targeting Tumor Vasculature
<130> FILE REFERENCE: Ellis-0001
<140> CURRENT APPLICATION NUMBER: US/10/507,178
<141> CURRENT FILING DATE: 2004-09-10
<150> PRIOR APPLICATION NUMBER: PCT/IB03/01458
<151> PRIOR FILING DATE: 2003-03-11
<150> PRIOR APPLICATION NUMBER: US 60/363,045
<151> PRIOR FILING DATE: 2002-03-11
<160> NUMBER OF SEQ ID NOS: 13
<170> SOFTWARE: PatentIn version 3.1

<210> SEQ ID NO 1
<211> LENGTH: 5
<212> TYPE: PRT
<213> ORGANISM: Homo sapiens
<400> SEQUENCE: 1
Ser Phe Ser Met Ser
1 5